

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING
37.5.103, 37.5.305, 37.5.307, 37.5.313,)	ON PROPOSED AMENDMENT
37.5.331, 37.5.503, 37.5.505,)	
37.78.103, 37.78.206, and 37.78.810)	
pertaining to fair hearing procedures)	
and temporary assistance for needy)	
families (TANF))	

TO: All Interested Persons

1. On December 4, 2006, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on November 27, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.5.103 PUBLIC ASSISTANCE, DAYCARE, MEDICAL, LICENSURE, AND
REFUGEE ASSISTANCE PROGRAMS: APPLICABLE HEARING PROCEDURES

(1) Hearings contesting adverse department actions under the programs specified in (1)(a) through (1)(k) are available to the extent granted in and according to the provisions of ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337, except as otherwise provided by department rule.

(a) through (b) remain the same.

(c) ~~families achieving independence in Montana (FAIM) financial assistance;~~
Temporary Assistance for Needy Families (TANF);

(d) through (k) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 41-3-1103, 52-1-103, 53-2-201, 53-2-904, 2-3-406, 53-4-212, 53-4-606, 53-6-111, 53-6-113, 69-8-412, MCA

37.5.305 APPLICABILITY OF NOTICE REQUIREMENTS (1) This rule,

ARM 37.5.503, and 37.5.505 apply only to claimants under the following programs:

(a) remains the same.

(b) ~~families achieving independence in Montana (FAIM) financial assistance;~~
Temporary Assistance for Needy Families (TANF);

(c) through (l) remain the same.

AUTH: 50-1-202, 53-2-201, 53-6-113, MCA

IMP: 41-3-1103, 50-1-202, 52-1-103, 53-2-201, 53-2-904, 53-4-202, 53-4-606, 53-6-111, 53-6-113, 53-6-131, 53-20-305, 69-8-412, MCA

37.5.307 OPPORTUNITY FOR HEARING (1) A claimant who is aggrieved by an adverse action of the department shall be afforded the opportunity for a hearing as provided in this chapter.

(a) through (b) remain the same.

(c) A request for a hearing by a claimant must be received by the department within 90 days ~~after~~ from the date of mailing of notice of the adverse action, except as otherwise provided in these rules.

(c)(i) through (4) remain the same.

AUTH: 2-4-201, 41-3-208, 41-3-1142, 52-2-111, 52-2-112, 52-2-403, 52-2-704, 52-3-304, 52-3-804, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-4-111, 53-4-212, 53-4-403, 53-4-503, 53-5-304, 53-6-111, 53-6-113, 53-7-102, 53-20-305, MCA

IMP: 2-4-201, 41-3-202, 41-3-205, 41-3-1103, 52-2-603, 52-2-704, 52-2-726, 53-2-201, 53-2-306, 53-2-606, 53-2-801, 53-4-112, 53-4-212, 53-4-404, 53-4-503, 53-4-513, 53-5-304, 53-6-111, 53-6-113, 53-20-305, MCA

37.5.313 DISMISSAL OF HEARING (1) A hearing may be dismissed when:

(a) through (a)(i) remain the same.

(ii) a request for hearing contesting an adverse department action under the food stamp program or the ~~families achieving independence in Montana (FAIM)~~ Temporary Assistance for Needy Families (TANF) financial assistance program may be withdrawn by oral request of the claimant;

(iii) through (3) remain the same.

AUTH: 53-2-201, 53-2-606, 53-4-212, 53-6-113, 53-7-102, MCA

IMP: 53-2-201, MCA

37.5.331 NOTICE OF APPEAL AND REVIEW OF PROPOSAL FOR DECISION (1) remains the same.

(2) The notice of appeal must be made to and shall be decided by the Board of Public Assistance, Department of Public Health and Human Services, Office of Fair Hearings, P.O. Box 202953, Helena, MT 59620-2953 in cases arising from the following programs:

(a) ~~FAIM;~~ Temporary Assistance for Needy Families (TANF);

(b) through (8)(b) remain the same.

AUTH: 52-2-704, 52-2-726, 53-2-201, 53-2-606, 53-4-212, 53-6-113, 53-7-

102, MCA

IMP: 52-2-704, 53-2-201, 53-2-606, MCA

37.5.503 NOTICE UPON APPLICATION FOR PUBLIC ASSISTANCE

(1) At the time of application for benefits administered by the department, including but not limited to ~~FAIM~~, Temporary Assistance for Needy Families (TANF), food stamps, Medicaid, LIEAP, LIWAP, refugee assistance, and daycare benefits, a claimant shall be informed in writing of:

(a) through (e) remain the same.

AUTH: 53-2-201, 53-2-606, 53-4-212, 53-6-113, 53-7-102, MCA

IMP: 53-2-201, MCA

37.5.505 NOTICE UPON ADVERSE PUBLIC ASSISTANCE ACTION

(1) Upon an adverse action by the department affecting benefits administered by the department, including but not limited to ~~FAIM~~, Temporary Assistance for Needy Families (TANF), food stamps, Medicaid, LIEAP, LIWAP, refugee assistance, and daycare benefits, the claimant shall be provided adequate and timely notice.

(a) through (e)(iv) remain the same.

(f) in the case of benefits received under all programs except the food stamp program:

(i) through (iii) remain the same.

(iv) claimant is a child receiving benefits under the ~~FAIM~~ TANF program and is removed from his home by judicial determination or is voluntarily placed in foster care by legal guardian;

(v) through (vi) remain the same.

(4) through (7) remain the same.

AUTH: 53-2-201, 53-2-606, 53-4-212, 53-6-113, 53-7-102, MCA

IMP: 53-2-201, MCA

37.78.103 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF):
DEFINITIONS The following definitions apply to this chapter:

(1) through (8) remain the same.

(9) ~~"Community service" means any hours a participant volunteers in a recognized volunteer position.~~ "Community service" means structured programs and embedded activities in which TANF participants perform work for the direct benefit of the community under the auspices of public or nonprofit organizations.

(10) through (29) remain the same.

(30) ~~"Job search" means activities that include but are not limited to:~~

~~(a) completing and submitting job applications;~~

~~(b) completing resumes or master applications; and~~

~~(c) career exploration, to investigate details/duties of a career path to determine true interest in a career. Examples include researching the dictionary of occupational titles, exploring the internet and interviewing with an employer or employee.~~

(30) Job search and job readiness assistance means the act of seeking or obtaining employment, preparation to seek or obtain employment, including life skills training, and substance abuse treatment, mental health treatment, or rehabilitation activities for those who are otherwise employable.

(a) such treatment or therapy must be determined to be necessary and certified by a qualified medical or mental health professional.

~~(31) "Job skills training directly related to employment" means training that may include but is not limited to:~~

~~(a) activities designed to familiarize participants with work place expectations and help them develop appropriate work behavior;~~

~~(b) classes that contribute to and prepare the participant for employment (e.g., skill specific classes, resume preparation and writing, interviewing skills and self-esteem); and~~

~~(c) any post secondary education not considered vocational educational training.~~

(31) "Job skills training directly related to employment" means training or education for job skills required by an employer to provide an individual with the ability to obtain employment or to advance or adapt to the changing demands of the workplace.

(32) through (36) remain the same.

~~(37) "On-the-job training (OJT)" means training in the private or public sector given to an employment and training participant which occurs while the participant is engaged in productive work and provides knowledge or skills essential to the full and adequate performance of the job.~~

(37) "On the job training" means training in the private or public sector that is given to a paid employee while he or she is engaged in productive work and that provides knowledge and skills essential to the full and adequate performance of the job.

(38) through (56) remain the same.

(57) "Unsubsidized employment" means full or part-time employment or self-employment in the public or private sector that is not subsidized by TANF or any other public program.

~~(57)~~ (58) "Valid loan" means a lender delivers a sum of money to a borrower pursuant to a written or oral agreement that the borrower will repay the sum in the future. The obligation to repay must be absolute and not contingent on the occurrence of an uncertain event.

~~(58) "Vocational educational training" means the pursuit of a degree or certificate less than a bachelor degree.~~

(59) "Vocational educational training" means organized educational programs that are directly related to the preparation of individuals for employment in current or emerging occupations requiring training other than a baccalaureate degree.

~~(59)~~ (60) "WoRC Employability Plan" means a negotiated document listing employment and training activities, and mutual obligations of the WoRC program and the participant regarding the course of action leading to the individual's employment and the number of hours and the time limits within which such activities and obligations shall be performed.

~~(60)~~ (61) "Work activities" means all activities used to meet federal

participation requirements at 45 CFR 261.30.

~~(61) "Work experience" means assessment, preparation, orientation and placement in a formal job site training experience.~~

(62) "Work experience" means placement in a formal job site training experience that provides an individual with an opportunity to acquire the general skills, training, knowledge, and work habits necessary to obtain employment. All work experience placements have a detailed training plan. The main purpose of work experience is to improve the employability of those who cannot find unsubsidized employment.

~~(62)~~ (63) "Work Readiness Component (WoRC)" means the activities case management component of the TANF Cash Assistance Program.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

37.78.206 TANF: GENERAL ELIGIBILITY REQUIREMENTS

(1) through (2) remain the same.

(3) The following are not eligible for TANF Cash Assistance:

(a) through (f) remain the same.

~~(g) an individual who was convicted after August 22, 1996, of any offense which is classified as a felony in the jurisdiction where the offense occurred and which has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the federal Controlled Substance Act, 21 USC 802(6);~~

(g) all members of the assistance unit which includes an individual who was convicted after August 22, 1996, of any offense which is classified as a felony in the jurisdiction where the offense occurred and which has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the federal Controlled Substance Act, 21 USC 802(6) who is not in compliance with the conditions of supervision, whose sentence associated with the felony conviction has not been discharged or the individual is not actively participating in treatment, if required;

(h) through (k) remain the same.

(l) all members of the assistance unit if any member of the assistance unit who is required by ARM 37.78.806 to participate in employment and training fails or refuses without good cause to negotiate and sign a WoRC Employability Plan; ;

(m) an individual who is sanctioned for noncompliance in employment and training activities negotiated in the Family Investment Agreement and/or WoRC Employability Plan or sanctioned for failure to accept and maintain employment without good cause; and

(n) an individual who is serving an intentional program violation as outlined in ARM 37.78.505.

(4) through (6) remain the same.

AUTH: 53-2-201, 53-4-212, MCA

IMP: 53-2-201, 53-4-211, 53-4-231, MCA

37.78.810 TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING: WORK EXPERIENCE PLACEMENT (WEX) (1) ~~The work experience placement (WEX) component is an activity of TANF employment and training designed to improve the employability of participants by assigning a participant to train in a nonprofit organization or public agency or in a for profit private agency. "Work experience" means placement in a formal job site training experience that provides an individual with an opportunity to acquire the general skills, training, knowledge, and work habits necessary to obtain employment. All work experience placements have a detailed training plan. The main purpose of work experience is to improve the employability of those who cannot find unsubsidized employment. The Other~~ specific purposes of the work experience placement component are to:

(a) through (c) remain the same.

(2) ~~After consulting with the participant and giving due consideration to the participant's preferences, the department shall determine whether the participant shall participate in WEX rather than in some other component, what work site the participant will be assigned to and how many hours per week the participant shall be required to participate. However, participants may not be required to participate more than 40 hours per week in work experience component activities, including hours spent in volunteer activities or paid employment. After consulting with the participant and review of the WEX site goals and training plan, the department shall determine what work experience training site will best suit the individualized needs of the participant and how many hours per week the participant shall be required to participate. However, participants may not be required to participate more than 40 hours per week in work experience component activities.~~

(3) through (4) remain the same.

AUTH: 53-4-212, MCA

IMP: 53-2-201, 53-4-211, 53-4-601, 53-4-613, MCA

3. ARM 37.5.103(1)(c), 37.5.305(1)(b), 37.5.313(1)(a)(ii), 37.5.331(2)(a), 37.5.503(1), and 37.5.505(1) and (3)(f)(iv) are proposed to be updated to replace FAIM references with Temporary Assistance for Needy Families (TANF). The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created the Temporary Assistance for Needy Families (TANF) Program that superseded the FAIM Cash Assistance Program and is the sole authority in place since the end of the State FAIM Waiver, December 31, 2003. This is only a program name change.

ARM 37.5.307(1)(c) is proposed to be updated to change the word "after" to "from" as the Medicaid Code of Federal Regulations (CFR) specifically states "from". This will bring consistency to the TANF and Medicaid programs.

Following is a brief overview of the TANF manual sections with substantive changes.

TANF 701-1 - Family Investment Agreement/WoRC Employability Plan TANF 701-1 is being updated to reflect who is a "work eligible" individual under the TANF Reauthorization regulations; therefore mandated to participate in employment and training activities.

TANF 701-2 - WoRC Participation TANF 701-2 is being updated to reflect the increased hours of participation based on the TANF Reauthorization regulations and the necessity to no longer attribute 12 hours toward each individual's participation hours for travel time to and from work activities and case management as these are not allowed within the new definition of allowable work activities. The increased hours of scheduled and verified participation will be 132 hours per month for single parent households and 152 hours per month per individual for two-parent households.

TANF 701-3 - Participation Components TANF 701-3 is being updated to reflect the new work activity definitions based on the federal guidance as to what constitutes an allowable work activity in the TANF Reauthorization regulations contained in the Deficit Reduction Act of 2005. Under TANF Reauthorization states are limited as to what constitutes an allowable work activity for purposes of meeting the work participation rate as mandated by the Administration for Children and Families. The department also added several new work activity definitions, again, as allowed by TANF regulations.

TANF 701-4 - WoRC Participation and Reconciliation TANF 701-4 is being updated to reflect the work activity reconciliation processes that are changing based on the TANF Reauthorization regulations. The system reconciliation involving closed TANF cases must be changed. Only the actual, verified hours of work activities will be reported in the TANF File.

TANF 702-1 - Conciliation TANF 702-1 is being removed from the manual as the formal conciliation process is being discontinued. Based on the strict requirements for participation in work activities contained in the TANF Reauthorization regulations, it has been determined that noncompliance without good cause in work activities will lead to an immediate referral for sanction.

TANF 702-2 - WoRC Sanction Review Process/Good Causes TANF 702-2 is being updated to reflect the removal of the conciliation process and emphasize the sanction committee review process and good cause situations and procedures. TANF Reauthorization adds ten days of excused absences from work activities per calendar year for good cause reasons which will resolve some participation concerns.

TANF 702-3 - Sanction TANF 702-3 is being updated to reflect the removal of the conciliation process. TANF Reauthorization adds ten days of excused absences from work activities per calendar year for good cause reasons, which will resolve some participation concerns. This section is also being updated to reflect the requirement for a sanctioned parent, considered a work eligible under the TANF Reauthorization regulations, to continue to participate in work activities.

ARM 37.78.103 has been updated to reflect the federal definitions of allowable work activities as defined in TANF Reauthorization contained in the Deficit Reduction Act

of 2005. Under the TANF Reauthorization states are limited as to what constitutes an allowable work activity for purposes of meeting the work participation rate as mandated by the Administration for Children and Families. Failure to meet this work participation rate will result in monetary penalties to the state.

This change will impact an average of approximately 3072 TANF participants who currently are mandated to participate in work activities. There will be no additional cost to the state unless a penalty is imposed for failure to meet the work participation rate.

ARM 37.78.206(3)(g) has been updated to fulfill the mandate of Senate Bill 29, 2005 Laws of Montana, Chapter 230, which removed the disqualification for an individual convicted of a drug-related felony offense from receiving TANF Cash Assistance. Under Senate Bill 29, an individual convicted of a drug-related felony offense may nevertheless qualify for TANF Cash Assistance if he or she was actively complying with the conditions of supervision was actively participating in treatment if required, or whose sentence associated to the felony conviction has been discharged. All members of an assistance unit that includes a convicted drug felony who is not in compliance with the conditions of supervision, not actively participating in treatment if required, or whose sentence has not been discharged are ineligible for TANF Cash Assistance.

This change will impact an average of approximately 77 TANF participants who were disqualified for TANF for drug-related felony issues and who are now eligible for TANF under Senate Bill 29. The average increase for TANF families would be \$77.00 per month. The increased annual cost to the TANF program is estimated at \$71,148, which would be funded with federal TANF block grant funding. There will be no additional cost to the state.

This ARM has also been updated to reflect current policy which indicates that intentional program violators as outlined in ARM 37.78.505 and individuals sanctioned for noncompliance in employment and training activities negotiated in the family investment and/or WoRC Employability Plan or sanctioned for failure to accept and maintain employment without good cause, as outlined in ARM 37.78.508, are not eligible for TANF Cash Assistance.

ARM 37.78.810 has been updated to reflect the federal definition of Work Experience Placement (WEX) as an allowable work activity as defined in TANF Reauthorization contained in the Deficit Reduction Act of 2005. Under TANF Reauthorization, states are limited as to what constitutes an allowable work activity for purposes of establishing the work participation rate as mandated by the Administration for Children and Families. Failure to meet this work participation rate will result in monetary penalties to the state.

This change will impact an average of approximately 3072 TANF participants who currently are mandated to participate in work activities. There will be no additional cost to the state unless a penalty is imposed for failure to meet the work participation

rate.

4. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on December 7, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct the hearing.

/s/ Francis Clinch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State October 30, 2006.